open court, to taste and smell exhibits of liquor to determine its intoxicating qualities, on the ground that the information thereby acquired is evidence and the juror becomes a witness and should be sworn as such. *State v. Lingrove,* 1 Kan. App. 51; *State* v. *Eldred,* 8 Kan. App. 625; *State* v. *Coggins,* 10 Kan. App. 455. Contra: *People* v. *Kinney,* 124 Mich. 486. Why the knowledge which a juror acquires by seeing and touching exhibits properly in evidence does not, whereas the knowledge obtained by tasting and smelling does, convert him into a witness is difficult to understand. In either case the knowledge results from the use of the senses and it is submitted that the avenue of information whether by sight, hearing, touch, taste or smell, should not so operate as to make knowledge gained by one group of the senses evidence, which is not evidence if acquired by another group. *Denver* v. *T. & F. W. Ry. Co.* v. *Ditch Co.,* 11 Col. App. 41; *Washburn* v. *Railroad Co.,* 59 Wis. 364. It would seem that no hard and fast rule should be laid down as in the Kansas cases, but that the question should be left to the discretion of the trial judge, who on grounds of propriety will not ordinarily allow the jurors to so taste and smell the liquor in controversy. WIGMORE, § 1159; 1 GREENLEAF, (16th Ed.) 31. Since in the instant case neither party objected to the jury having the bottles of whiskey, they waived the right, which would otherwise exist under the Kansas rule, to assign this as error.

HUSBAND AND WIFE—NECESSARIES.—This action was brought by a tradeswoman against a husband to recover $15,000 for dresses supplied to the wife within a period of six years and alleged to have been necessaries. Defendant had an annual income of $40,000 and he had expended $30,000 a year for the living expenses of himself and wife. The court *held* that the question as to what are necessaries depends in a large measure upon the style of living adopted by the husband, and that the burden of proof was on the defendant to show that he had made ample provision for his wife. *Wickstrom* v. *Peck,* (1914) 148 N. Y. S. 596.

The husband is under a legal duty to support his wife. As this duty cannot be enforced by the wife in a civil action, the law holds him liable for necessaries supplied to her by third parties. It has been held that necessaries consist only in bare necessities such as food, drink, and clothing. *Shelton* v. *Pindleton,* 18 Conn. 417; *Ray* v. *Adden,* 50 N. H. 82. The principal case expresses the modern view. Necessaries are such articles of utility as are suitable to maintain the wife in accordance with the estate and social position of the husband, *Bergh* v. *Warner,* 47 Minn. 250; *Raynes* v. *Bennett,* 114 Mass. 424; *Barr* v. *Armstrong,* 56 Mo. 577. Even articles of ornament, such as jewelry, may be necessaries. *Cooper* v. *Haseltine,* 50 Ind. App. 400. The true criterion for determining what are necessaries is the husband's apparent financial and social position, *Clark* v. *Cox,* 32 Mich. 204; SCHOULER, HUSBAND AND WIFE, § 102, and not the wife's social position, *Bonny* v. *Perham,* 102 Ill. App. 634. What are necessaries is a question for the jury, *Davis* v. *Caldwell,* 12 Cush. 512. A husband is liable in an action to recover for necessaries only if he has failed in or neglected his duty to provide suitably for his wife, *Clark* v. *Cox,* 32 Mich. 204. The authorities are

not uniform as to whether or not the burden is on the plaintiff to prove the husband's failure to provide suitably for his wife. *Thebbets* v. *Hapgood,* 34 N. H. 420; *Baker* v. *Carter,* 83 Me. 132; and *Cooper* v. *Haseltine,* 50 Ind. App. 400 take the view of the principal case that the plaintiff need not show the husband's neglect of duty to provide for his wife, and that the husband, to escape liability, must assume the burden and prove that he has made ample provision. A strong line of authorities takes an opposite view. *Raynes* v. *Bennett,* 114 Mass. 424; *Bergh* v. *Warner,* 47 Minn. 250; *Eder* v. *Grifka,* 149 Wis. 606.

NEGLIGENCE—VIOLATION OF STATUTE AS NEGLIGENCE PER SE.—Oregon Laws of 1909, p. 103 provides "that no person, firm, or corporation shall employ or allow any person under the age of eighteen years to run, operate, or have charge of any elevator used for the purpose of carrying either persons or property." Plaintiff's intestate, a boy of 17 years, was in the employ of defendant company, and was permitted to run an elevator, situated in defendant company's place of business. When operating the said elevator on one occasion, the plaintiff's intestate was caught between the elevator and shaft and crushed to death, and an action was brought by his administrator. *Held,* that the violation of the statute constituted negligence per se. *Beaver* v. *Mason, Ehrman & Co.* (Ore. 1914), 143 Pac. 1000.

The cases are not in accord as to the effect of such statutes upon the rights of private persons affected thereby. Many cases hold with the principal case that—although the act itself is of such a nature that it would not necessarily be negligent, and aside from any consideration of prudence and skill—the fact that it is in violation of a statute or ordinance directly prescribing what shall or shall not be done, makes the act negligent per se, and entitles an innocent person injured by the illegal acts to a civil remedy therefor. *Chicago etc. Ry. Co.* v. *Pitchford* (Okla. 1914), 143 Pac. 1146; *Tobey* v. *Burlington, etc. Ry. Co.,* 94 Ia. 256; *Jetter* v. *New York etc. Ry. Co.,* 2 Abb. Dec. 458; *Indiana, etc. Ry. Co.* v. *Barnhart,* 115 Ind. 399; *Tex. & Pac. Ry. Co.* v. *Brown,* 11 Tex. Civ. App. 503; *Peterson* v. *Standard Oil Co.,* 55 Ore. 522; *Sterling* v. *Union Carbide Co.,* 142 Mich. 284; *Platt* v. *Southern Photo Material Co.,* 4 Ga. App. 159. According to another class of cases, the violation of a statute or ordinance of this kind is not negligence per se, but only "some evidence of negligence," to be given to the jury together with all other evidence on the question of negligence. *Rainey* v. *N. Y. C. etc. Ry. Co.,* 68 Hun. 445; *Knuffle* v. *Knickerbocker Ice Co.,* 84 N. Y. 488; *McRickard* v. *Flint,* 114 N. Y. 222; *Connor* v. *Electric Traction Co.,* 173 Pa. St. 602. Most of the cases belonging to this class go so far as to say that although not conclusive upon the subject of negligence (thus distinguishing them from the first class discussed) proof of the violation of such a statute or ordinance is sufficient to establish a prima facie case, which, however, may be rebutted by proof of other facts or circumstances. See *McRickard* v. *Flint,* supra; *Jupiter Coal Min. Co.* v. *Mercer,* 85 Ill. App. 96. But in order that such violation be either prima facie negligence or negligence per se, the duty prescribed by the statute must